ment is annexed to the substance of the remainder and is personal to the remainderman, the remainder is contingent until the time set for distribution, applies to remainders to a class. *Thomas* v. *Thomas,* 247 Ill. 543.

SALES—RESCISSION OF CONTRACT BECAUSE OF FAILURE OF SELLER TO FULFILL WARRANTY.—The parties entered into a contract under which the defendant was to furnish and install two gas engines of 150 brake horsepower each. Relying on the defendant's promise that the engines would be of this power, the plaintiff made a deposit. The engines the defendant had built according to the plaintiff's plans in fact tested only 140 horse-power. Because of this discrepancy in their capacity the plaintiff refused to receive the engines at the freight house. He sued to recover his desposit. In a cross-complaint the defendant alleged that before he shipped the engines he told the plaintiff of the shortage of their capacity, but that the plaintiff said for him to ship them anyway. What finding of fact was made as to this allegation does not appear in the report. Judgment was given for the plaintiff on the ground of failure of consideration. *Mahony* v. *Standard Gas Engine Co.* (Cal., 1921), 202 Pac. 146.

The general rule is that when title has passed, if the chattel fails to come up to warranties the buyer's only remedy is an action for damages. *Street* v. *Blay,* 2 B. & Ad. 456; *Lyon* v. *Bertram,* 20 How. (U. S.) 149; *Crabtree* v. *Kile,* 21 Ill. 180; *Hoover* v. *Sidener,* 98 Ind. 290. But where a warranty is made with intent to defraud, and damage occurs, it is ground for rescission. *Montgomery* v. *Bucyrus Mach. Works,* 92 U. S. 257. Led by Massachusetts, some jurisdictions hold that in case of a "serious failure of consideration" through breach of warranty the buyer can return the property and be freed from liability for the purchase price. *Bryant* v. *Isburgh,* 13 Gray 607; *Kuntzman* v. *Weaver,* 20 Pa. St. 422; *Scranton* v. *Tilley,* 16 Texas 183; *Ruby Carriage Co.* v. *Kremer,* 26 Ky. Law Rep. 274. Although in the principal case the language used by the court might indicate a tendency to follow the Massachusetts rule allowing rescission of sale for breach of warranty, the holding on the facts does not give sound support to this doctrine. If the court in fact made an unreported finding that the plaintiff asked that the machines be shipped after he knew of their defect, even the courts following the Massachusetts rule would have held that he thereby waived his right to return the chattel for that breach of warranty. *Aultman-Taylor Co.* v. *Ridenour,* 96 Iowa 638. If no such finding was made, the plaintiff merely recovered under the doctrine recognized alike by the courts that allow rescission and those that do not, that in the case of a tender of something different than called for by the executory contract of sale the buyer can reject what is tendered and recover any money he has paid in advance. *Pope* v. *Allis,* 115 U. S. 363.

TAXATION—STOCK DIVIDENDS TAXABLE AS INCOME.—In 1917, the complainant stockholders in the Bronx Company received a "stock dividend" declared against appreciation of capital assets. *Held,* such "stock dividends"

are taxable as a "receipt of income" under St. 1916, c. 269. *Tilton* v. *Trefry* (Mass., 1921), 131 N. E. 219.

We may assume, in the principal case, that a part of this appreciation occurred before the Income Tax Law was passed. Some cases take the view that earnings of a corporation do not become "income" to the stockholders until paid to them, so the fact that any portion of the dividend was earned before the Tax Law went into effect would be immaterial. *Van Dyke* v. *Milwaukee,* 159 Wis. 460. There the court said, "As a stockholder he acquired no right to it until it was distributed in the form of dividend. The profits of a corporation become income to stockholders when distributed as dividends, but not before." Accord, *State* v. *Widule,* 166 Wis. 48 (dividends based on increased value of capital assets). The reasoning in the cases taking the contrary view seems more convincing. In *Lynch* v. *Turrish,* 236 Fed. 653, the court said, "They [stockholders] are the equitable and beneficial owners of all of its [corporation's] property, and it is the mere holder and manager of it for them. * * * As against its stockholders, a corporation has no and they have all the beneficial interest in its property. * * * The enhanced value of the property which accrues from the gradual increase of its value during a series of years prior to the effective date of an income tax law, although divided or distributed by dividend or otherwise subsequent to that date, does not become income, gain, or profits taxable under such an act." Accord, *Gray* v. *Darlington,* 15 Wall. 63; *Loomis* v. *Wattles,* 266 Fed. 876 (stock dividends); *Stevens* v. *The Hudson Bay Co.,* 25 T. L. R. 709. The leading case tending to support the principal case is *Tax Commissioner* v. *Putnam, 227* Mass. 522, but there the "stock dividend" was declared against profits other than increased capital assets. *State* v. *Widule, supra,* is more direct authority supporting the principal case. In an opinion by Justice Holmes, *Towne* v. *Eisner,* 245 U. S. 418, it was held that "stock dividends" were not "income." That case was followed in *Eisner* v. *Macomber,* 252 U. S. 189, where Justice Holmes dissented, basing his opinion on the belief that the sixteenth amendment to the Federal Constitution was broad enough to include stock dividends as income. In *Eisner* v. *Macomber* the act of Congress was broad enough to include stock dividends. Holmes cited *Tax Commissioner* v. *Putnam, supra,* with approval. The cases distinguishing "stock dividends" from "cash dividends" seem to have lacked convincing arguments to support the thesis that the former should be treated as a mere "distribution of capital" while the latter are to be regarded as "income." Compare *Wall* v. *London & Provincial Trust, Ltd.* [1920] 1 Ch. 45; 2 Ch. 582.

TORTS—LIABILITY OF BAILOR OF AUTOMOBILE WITH DEFECTIVE STEERING GEAR TO INJURED THIRD PARTY.—D, the owner of an automobile, hired it to a bailee, who, while driving down a city street, ran into and injured P when the automobile became ungovernable due to a defective steering gear. By demurrer, D admitted that he negligently allowed bolts in the steering gear to become loose. *Held,* one who lets automobiles for hire "owes a duty to the public to the extent that he is bound to use ordinary care to see that